Supreme Court, U.S.
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No. 94-1735

In The
Supreme Court of the United States
October Term, 1994

WALTER SAVOY,

Petitioner,

v.

CASCADE COUNTY SHERIFF'S DEPARTMENT; AND UNITED STATES OF AMERICA, BY AND THROUGH THE FARMERS HOME ADMINISTRATION, ITS AGENCY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MONTANA SUPREME COURT

BRIEF FOR RESPONDENT CCSD IN OPPOSITION

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1. Does petitioner have a protected property interest in the instant matter and, if so, was he afforded due process in the redemption procedure?

2. Did the Cascade County Sheriff's Department properly proceed in issuing the Sheriff's Deed to the FmHA after receiving a court order to do so?

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JURISDICTION

The Supreme Court of the United States does not have jurisdiction over this matter as alleged by petitioner, pursuant to 28 U.S.C. § 1257(a). Petitioner does not enjoy a protected property interest and, consequently, there is no privilege or right properly claimed under the United States Constitution. Further, the majority of petitioner's claimed errors revolve around the application of state statutes under which there are no claims of

constitutional violation. Consequently, it is urged by respondent Cascade County Sheriff's Department ("CCSD") that jurisdiction be declined.

The statutes involved are Mont. Code Ann. §§ 25-13-801, *et seq.*, attached to the appendix hereto as **Exhibit A**.

STATEMENT OF THE CASE

The initial complaint in this action was filed on August 17, 1990, in Cascade County, Montana, seeking declaratory judgment and petition for writ of mandamus. A hearing on the writ of mandamus was held in December of 1990, and an order issued as a result of that hearing on December 20, 1990. A copy of that order is attached as **Exhibit B** to the appendix hereto. At the time of that hearing, petitioner Walter Savoy ("Savoy") was present, represented by counsel, and testified. He also called witnesses to testify on his behalf. As a result of that hearing, as well as the arguments and briefs of the parties, the state district court ordered that the Cascade County Sheriff's Department (hereinafter "CCSD") issue the deed to the Farmers Home Administration ("FmHA"), finding that there had been substantial compliance with redemption statutes.

Following that hearing and completion of some discovery, all parties moved for summary judgment. Summary judgment arguments were heard on November 29, 1993, and an order was

issued by Judge McCarvel on December 16, 1993, granting summary judgment in favor of FmHA and CCSD. The grant of summary judgment was appealed by Savoy to the Montana Supreme Court, which affirmed the grant of summary judgment by written opinion dated December 13, 1994. Savoy's petition for rehearing was denied on January 18, 1995.

FEDERAL QUESTION WHEN RAISED

Petitioner has consistently alleged from the outset of his complaint that the redemption statutes were not complied with by FmHA and, consequently, that CCSD should not have issued the deed to FmHA. Savoy raises no question as to the constitutionality of the statutes, only alleging that the statutes were not substantially complied with and that as a consequence the petitioner has been deprived of property without due process of law. The crux of petitioner's complaint has always been lack of strict compliance with the redemption statutes by FmHA, thereby entitling petitioner to the deed to the property in question.

STATEMENT OF THE FACTS

On February 28, 1989, a judgment and decree of foreclosure was entered in the Montana Eighth Judicial District Court, Cascade County, Cause No. BDV-86-991, a case initially brought by Interstate Production Credit Associates ("IPCA") against Hugh Sands and Rita Sands, the Federal Land Bank of Spokane, the United States of

America, and First National Bank of Fairfield. The Federal Land Bank of Spokane then filed a cross-claim against Hugh Sands and Rita Sands, Richard Garren and Jane Garren, the United States of America, and First National Bank of Fairfield.

In February of 1989, judgments and decrees of foreclosure were entered on both the complaint and the cross-complaint. IPCA obtained a judgment against the defendants, and as part of that judgment the sale of the subject real property was ordered. The Federal Land Bank of Spokane also obtained a judgment and decree of foreclosure on its cross-claim. As a part of its judgment, the Federal Land Bank of Spokane was allowed to sell Tract II of the real property described in the foreclosure action. The court ordered that Tract II be sold at a judicial foreclosure sale. An order of sale was issued by the court on March 23, 1989, directing CCSD to sell the described real property under both the complaint and the cross-complaint and the judgments rendered thereunder.

On May 23, 1989, pursuant to the order of sale, Sheriff Barry Michelotti did cause the sale to take place, and sold the real property by tract as ordered by the court. Tract I was purchased by petitioner, as was Tract II. Both were auctioned separately and purchased separately. Tract I was purchased for $3,001; Tract II was purchased for $85,000. On May 24, 1989, Undersheriff James Burns, the deputy in charge of the sale, prepared the Sheriff's Certificate of Sale on Decree or Order

of Sale. On May 17, 1990, Patrick Sands, successor-in-interest to Hugh and Rita Sands, provided to Sheriff Barry Michelotti a Notice of Redemption by the successor-in-interest to the judgment debtors. Attached as Exhibits A and D to the Notice of Redemption was a certified copy of the Sheriff's Certificate of Sale on Decree or Order of Sale, and a Quit Claim Deed wherein Hugh D. Sands and Rita D. Sands transferred their interests in the subject property to Patrick Sands. Sheriff Michelotti, by Undersheriff John Strandell, issued a Sheriff's Certificate of Redemption on May 21, 1990, in relation to Tract I, and presented that, along with a check in the amount of $3,180.06, to petitioner Walter Savoy.

On May 17, 1990, Sheriff Michelotti received a document entitled "Notice of Redemption" from FmHA. The document described the property to be redeemed as Tract II, and contained a legal description of Tract II. The document also identified the property as that which was sold to petitioner on May 23, 1989. Accompanying the Notice of Redemption was a check in the amount of $90,030.14. This amount represented the purchase price of $85,000, together with statutorily allowed interest. Also accompanying the Notice of Redemption was a letter directed to Walter Savoy from Susan Hensley, who was represented to be the County Supervisor of FmHA. The letter informed petitioner that the property identified as Tract II and purchased by petitioner on May 23, 1989, for the price of $85,000 was being redeemed by FmHA. The last sentence of the letter directed

Mr. Savoy to contact Ms. Hensley if he had any questions.

Sheriff Michelotti, by and through Undersheriff John Strandell, prepared a Sheriff's Certificate of Payment Price of Real Property and Decree of Foreclosure. This document appropriately described Tract II in its entirety by legal description, and represented that FmHA, a judgment debtor, tendered the appropriate amount of money, including principal plus accrued interest up to the time of redemption.

Sometime after the stated intention to redeem, petitioner contacted CCSD and had a meeting with Undersheriff John Strandell and Deputy Richard Duncan. Petitioner presented questions about the redemption process, and Undersheriff Strandell cited petitioner specific statutes pertaining to redemption and made them available to petitioner (Strandell Depo., p. 6). Undersheriff Strandell also recalls that the petitioner was unhappy because he did not feel that at the time of the sale the redemption rights were appropriately explained, and no one explained to him who had the right to redeem (Strandell Depo., p. 7). Undersheriff Strandell told petitioner during this conversation that he could not provide legal advice to petitioner in relation to the redemption. This meeting took place sometime prior to May 24, 1990 (Strandell Depo., pp. 8-9).

CCSD did not hear anything further in relation to the redemption until June 8, 1990, at

which time a letter was received from attorney Gary Deschenes, who is currently representing petitioner. Mr. Deschenes' letter cited very generally to Mont. Code Ann. § 25-13-807 in support of the general proposition that the redemption was not appropriate. Demand was made that the Sheriff's Deed be issued to petitioner. A response by letter was made on June 21, 1990, explaining that the general nature of the complaint of "irregularity" precluded any real review, but invited Mr. Deschenes to further discuss the matter. On June 26, 1990, Mr. Deschenes confirmed, after discussion, that CCSD would do nothing further until a court order was in place instructing CCSD as to who should receive the deed.

The next communication from the petitioner was his complaint seeking a writ of mandamus directing CCSD to issue the deed to petitioner.

The matter was schedule for hearing on the petition for writ of mandamus on December 4, 1990. Petitioner was present, testified, and called witnesses to testify in his behalf. Agents of the FmHA were present and testified, as well. Cascade County Sheriff Barry Michelotti was present and available for testimony, but provided no testimony and took no position in relation to which party should receive the deed, only taking a position on the propriety of an award of attorney fees against CCSD. On December 20, 1990, the court, by order, denied the petition for writ of mandamus. In that order, the lower court

specifically held that the FmHA did present a certified copy of the judgment decree that evidenced its right to redeem. In that judgment decree, the mortgage of FmHA was described by recording information and by date. In the order, the lower court found, "The Cascade County Sheriff's Department performed all duties and responsibilities statutorily required of it in a reasonable, diligent and prudent matter." Findings of Fact, Conclusions of Law, and Order (12/20/90), p. 6, ¶ 7.

The petition for writ of mandamus was denied, and petitioner was denied an award of attorney fees against CCSD. The court also specifically found substantial compliance by FmHA with the redemption statutes, and that because FmHA was clearly a party entitled to redeem, any variation from the procedural aspect of the redemption statutes was not fatally defective. Consequently, the lower court ordered that CCSD issue a deed to FmHA for the property described as Tract II. Pursuant to that court order, the Sheriff's Deed was finally issued to FmHA in January of 1991.

On December 16, 1993, after complete briefing and oral arguments, the court entered an order awarding summary judgment to CCSD and FmHA. That order, which is attached hereto as **Exhibit C**, reveals that an affidavit had been received by counsel for petitioner in June of 1989, indicating that the amount of money owed to the FmHA under its mortgage in relation to Tract II

was in excess of $400,000. The court also indicated in its findings of fact that CCSD received from FmHA, with the Notice of Intention to Redeem, a certified copy of the Judgment Decree of Foreclosure. In that judgment decree, the mortgage held by FmHA relative to Tract II was set forth with sufficient clarity and identified appropriately by date and recording information so as to allow any interested person to search the appropriate records and obtain the information relative to the mortgage.

It is that order from which the appeal to the Montana Supreme Court was taken and, further, serves as a basis for the petition herein.

ARGUMENT

I. Introduction

Petitioner's argument that as a result of the foreclosure sale he enjoyed a property right is inaccurate and incorrect. Petitioner enjoyed no such protected property right. Instead, the defects of which petitioner complains are technical, at most, and because petitioner's interest in the property was an equitable one, it does not reach the stature of "property" within the meaning of the due process clause.

Even if petitioner's interest in the property did acquire the status of "property" within the parameters of the due process clause, petitioner

was afforded adequate due process, both procedurally and substantively.

II. Discussion

A. Petitioner Did Not Enjoy a Protected Property Interest

Petitioner claims that it is without dispute that he enjoyed a protected interest in property. However, the issue is not so simple as petitioner would have this Court believe. In *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct. 1554 (1978), this Court recognized that there are procedural constraints on governmental actions that work a deprivation of property relating only to interests that acquire the stature of property within the meaning of the due process clause and its parameters. This Court has on numerous occasions recognized that there are instances where the "property" did not acquire the stature of being protected by the due process clause. In *Ingraham v. Wright*, 430 U.S. 651, 51 L.Ed.2d 711, 97 S.Ct. 1401 (1977), this Court noted that there were no procedural safeguards constitutionally mandated in school disciplinary cases. In *Dixon v. Love*, 431 U.S. 105, 52 L.Ed.2d 172, 97 S.Ct. 1723 (1977), this Court found that an evidentiary hearing was not necessary prior to revocation of a driver's license based upon repeated traffic offenses.

Numerous state courts have determined that the statutes setting forth the procedural parameters of redemption are procedural only and do not

affect substantive rights of the purchaser. *See*, ***Tech-Fluid Serv. v. Gavilan Operating***, ____ Utah App. ____, 787 P.2d 1328 (1990); ***GESA Federal Credit Union v. Mutual Life Ins. Co.***, 105 Wash.2d 248, 713 P.2d 728 (Wash. 1986).

The Montana Supreme Court has noted that the right of redemption "is not a property interest in any sense of the term but is a bare personal privilege." *See*, ***Lester v. J&S Investment Co.***, 171 Mont. 267, 557 P.2d 299, 301 (1976).

Consequently, it is not without dispute that the petitioner enjoyed a protected property interest. To the contrary, it is asserted by respondent CCSD that there was no protected property interest here, in that, at most, the petitioner enjoyed an equitable interest in the property and one that could be terminated by the simple exercise of one's redemption rights.

B. Petitioner Is Not Entitled to Due Process

Even if this Court were to determine that petitioner enjoyed a protected property interest, the inquiry does not end there. As this Court stated in ***Memphis Light***, *supra*:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise

> interested parties of the pendency of the action and afford them an opportunity to present their objection.

Id., , 436 U.S. at 13, 56 L.Ed.2d at 41.

The parameters of due process are based on three separate factors: (1) property interests that will be affected by the official action; (2) the risk of an erroneous deprivation through the procedures used and the value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See*, ***Mathews v. Eldridge***, 424 U.S. 319, 324, 47 L.Ed.2d 18, 96 S.Ct. 893 (1976). This Court acknowledged in ***Mathews*** that there are areas where the government may act without providing additional advance procedural safeguards.

Consequently, because there is no protected property interest here, the due process clause does not control. Even if it did control, there is no indication that the procedural safeguards that are in place are not adequate.

C. Statutory Parameters for Redemption in Montana

The petitioner complains that the FmHA failed to comply with various statutory mandates. Some of the alleged deficiencies do not at all affect

petitioner's status or position in the instant litigation. For instance, whether the FmHA filed a notice with the Clerk and Recorder's Office does not affect the status of the petitioner in the instant matter, and has no bearing whatsoever on whether petitioner was afforded the appropriate notice. Further, if FmHA had complied with the provision of serving a copy of the docket of the judgment or mortgage, petitioner would still be no further ahead than what he was when the FmHA provided a certified copy of the foreclosure order and judgment in the underlying matter, which sufficiently and clearly described the mortgage upon which FmHA was relying for its redemption interest.

Petitioner claims that payment of proper funds was not made. However, petitioner admitted during the December, 1990, hearing that he had received the money to which he was entitled for Tract II. He also admitted that prior to this redemption, he understood and knew that Tract I had already been redeemed by a party separate and apart from FmHA. Consequently, it seems contradictory for petitioner to be claiming that he then believed that FmHA was trying to redeem both tracts, when in fact the notice referred only to Tract II and the amount of money presented was only for Tract II. At no time has the FmHA attempted to redeem Tract I, in that it was properly redeemed at or about the same time that this instant redemption took place, by another, unrelated party. The redemptioner of Tract I has been in possession of the property since its redemption, and that has not been the subject of

any litigation. Consequently, the petitioner's claim that the payment of proper funds has not been made is a specious argument, and deserves no consideration.

An affidavit was not produced by FmHA to indicate the amount currently owing on the lien. However, as was noticed by the lower court's order awarding summary judgment in 1993, counsel for petitioner had received an affidavit dated June of 1989, 11 months prior to the redemption by FmHA, which indicated that the amount owed by the debtor to FmHA under the mortgage was over $400,000. During the 1993 summary judgment arguments, counsel for petitioner specifically noted that the petitioner was concerned about the land. "That's what he wants [the land], not the cash." *See*, Transcript on Appeal, Hearing (11/29/93), p. 13, ll. 9-10, **Exhibit D** hereto.

Unfortunately, it is clear that what petitioner wants is the land, but that is not what he is entitled to, nor was he ever entitled to it. Petitioner purchased the land at a foreclosure sale and it was, consequently, subject to a one-year period of redemption. As noted by the Montana Supreme Court in ***Lester v. J&S Investment Co.***, *supra*, in taking possession of the property at a foreclosure sale, "[T]he buyer is taking a calculated chance that the mortgagor will be unable to redeem and thus the buyer may have gained the property at a bargain price." ***Id.***, 557 P.2d at 301.

Here, while the petitioner gained an equitable interest for the period of one year at a "bargain price," the mortgagor and/or a junior mortgagee was able to redeem and, consequently, the "calculated chance" that petitioner took in purchasing the property was not successful. Here, though, petitioner cannot claim that the money that he paid for Tract II was not returned to him along with the appropriate statutorily-allowed interest.

Petitioner has been deprived of no property. He has been paid for the property which he attempted to obtain at a bargain price. There has been no taking of any property whatsoever, much less a wrongful taking or taking in violation of due process.

There was no effort on behalf of FmHA to redeem both tracts for the price of one. To the contrary, as petitioner well understood, FmHA redeemed Tract II and the person entitled to redeem Tract I did so at about the same time.

Petitioner's efforts to mislead this Court into believing that FmHA either was trying to redeem two tracts for the price of one or was not paying a sufficient amount of money for the redemption of Tract II are misguided. All parties knew and/or understood that the tracts were sold separately and were redeemed separately.

D. Any Failures to Comply with Statutory Mandates Are Technical Only

There is a great deal of argument in the lower court as to whether substantial compliance, or strict compliance, was required (with the redemption statutes). In his brief to this Court, petitioner cites and relies upon the case of ***Tech-Fluid Serv. v. Gavilan Operating***, 787 P.2d 1328 (Utah App. 1990). ***Tech-Fluid*** stands for a proposition other than that which was cited by petitioner in his brief to this Court. In ***Tech-Fluid***, the Utah appellate court noted that all that was needed was substantial compliance with the procedural aspects of the redemption statutes. In that case, the redemptioner tendered the correct amount of money within the redemption period, and tendered some proof of an assignment from the mortgagor of redemptioner's right to redeem. He also included a "Notice of Redemption" which provided additional facts. The Utah court noted that these requirements "are procedural in nature and do not affect substantive rights of the purchaser." ***Id.***, 787 P.2d at 1334.

The Washington court had an opportunity to discuss a situation factually similar to the one at bar. In ***GESA Federal Credit Union v. Mutual Life Ins. Co.***, 105 Wash.2d 248, 713 P.2d 728 (1986), the purchaser had failed to file a statement of payment of irrigation tax assessments with the county auditor. These payments totalled approximately $245,000. The purchaser was statutorily required

to provide actual notice of the cost of the redemption. The court held that even though the statement of irrigation tax payments was not provided, there had been substantial compliance with the appropriate statute. In so holding, the Washington court noted that some redemption statutes confer a statutory right of redemption, while others establish the procedure by which that right is perfected. These latter statutes are remedial in nature and to be liberally construed. If there is a technical procedural error or an error in the statutes establishing the procedure by which the right of redemption is perfected, a forfeiture requirement would not only be unjust but would also be inconsistent with the purpose of the statute because it does not affect substantive rights. As the Washington court noted, to allow such a result would be an exultation of form over substance.

Here, it cannot seriously be argued without torturing facts, logic and the truth, that the petitioner was given the amount of his sale price with the appropriate statutory interest. The tender of payment was made within the period of time allowed for redemption. Consequently, any deviation or failure to comply with the statutes regarding redemption is technical in nature and, consequently, harmless, as it did not affect a substantive right.

In ***Household Finance Corp. v. Bacon***, 58 Ore. App. 267, 648 P.2d 421 (1982), the Oregon court addressed the issue of failure to provide to the Sheriff the affidavit of an amount due and the

notice of intend to deem. Both items were statutorily required. Noting that the redemption statutes were remedial in nature and could be liberally construed, the court stated:

> Those provisions are for the benefit and protection of the Sheriff, who may refuse to allow the redemption if those requirements are not met. The Sheriff did not refuse and is not now complaining.

Id., 648 P.2d at 423.

Here, it is clear that Mont. Code Ann. § 25-13-801 establishes the right of redemption. The statutes following Mont. Code Ann. § 25-13-801 set forth the procedure for redemption and are, consequently, remedial in nature and to be liberally construed. The lower court was correct in adopting the substantial compliance test, and appropriately applied that test in the instant matter.

The petitioner alleges that CCSD failed to enforce the provisions of the statutes and, consequently, participated in the taking of property without due process of law. What the petitioner fails to recognize is that CCSD did not issue a deed until January of 1991, some 30 days after the time that the court issued its order regarding the writ of mandamus. In that order, CCSD was required by the court to issue the deed in favor of FmHA. After entry of that order, CCSD had no

alternative but to follow the valid December, 1990, court order.

In the lower courts, the CCSD argued judicial immunity as a result of its conduct pursuant to the December, 1990, order. There is no mention in petitioner's brief to this Court of that argument. However, the record below clearly reflects that CCSD is entitled to absolute judicial immunity as a result of its enforcing and implementing a valid court order. Parenthetically, the December, 1990, court order directing CCSD to issue the deed has remained unchallenged and has not been the subject of any appeal. Consequently, the order is final and ultimately controls the conduct of CCSD in issuing the deed to the appropriate party.

CONCLUSION

Petitioner has raised some novel arguments in his briefs, both in the lower courts and to this Court. However, it is imperative that CCSD point out that petitioner has been deprived of nothing. While he wanted the land and not the cash, as was recognized by his attorney in hearings before the lower courts, that is not a right to which he was entitled. He took a "calculated risk," hoping that he would obtain the property at a bargain price. He took the property subject to a one-year redemption, which meant that he could lose the property, any time within the one-year period, to either the debtor or another party entitled to redeem. That is the only thing that occurred here: the property was redeemed by a party entitled to

do so. The redemption was done within the period of time statutorily mandated, and Savoy received the appropriate amount of money. That should end the inquiry, and the petition for writ of certiorari should be denied.

DATED this 10th day of May, 1995.

UGRIN, ALEXANDER, ZADICK
& HIGGINS, P.C.

By: _____

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CERTIFICATE OF MAILING

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails at Great Falls, Montana, enclosed in a sealed envelope with first class postage prepaid thereon and addressed as follows:

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DATED this 10th day of May, 1995.

UGRIN, ALEXANDER, ZADICK
& HIGGINS, P.C.

APPENDIX

EXHIBIT A

Part 8
Redemption of Real Property

Part Cross-References
Docketing of judgment — lien, 25-9-301.
Rights of redemption applicable, 71-1-228.
Action to redeem mortgage, 71-1-230.
Redemption by multiple mortgagors, 71-1-231.
Liens generally, Title 71, ch. 3.

25-13-801. Who may redeem. (1) Property sold subject to redemption, as provided by 25-13-710, or any part sold separately may be redeemed in the manner hereinafter provided by the following persons or their successors in interest:

(a) the judgment debtor, the judgment debtor's spouse, or his successor in interest in the whole or any part of the property and, if the judgment debtor or successor be a corporation, a stockholder thereof;

(b) a creditor having a lien by judgment, mortgage, or attachment on the property sold or on some share or part thereof subsequent to that on which the property is sold. If a corporation be such creditor, then any stockholder thereof may redeem.

(2) The persons mentioned in subsection (1)(b) of this section are, in this part, termed "redemptioners".

History: En. Sec. 230, p. 181, L. 1867; re-en. Sec. 280, p. 87, Cod. Stat. 1871; re-en. Sec. 330, p. 129, L. 1877; re-en. Sec. 330, 1st Div. Rev. Stat. 1879; re-en. Sec. 341, 1st Div. Comp. Stat. 1887; amd. Sec. 1234, C. Civ. Proc. 1895; re-en. Sec. 6837, Rev. C. 1907; amd. Sec. 1, Ch. 107, L. 1913; re-en. Sec. 9442, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 701; amd. Sec. 1, Ch. 16, L. 1927; re-en. Sec. 9442, R.C.M. 1935; amd. Sec. 55, Ch. 535, L. 1975; R.C.M. 1947, 93-5834.

Cross-References
Docketing of judgment — lien, 25-9-301.
Disposal of foreclosed agricultural land, Title 25, ch. 13, part 9.
Prejudgment attachment, Title 27, ch. 18.

25-13-802. Time for redemption — amount to be paid. The judgment debtor or redemptioner may redeem the property from the purchaser any time within 1 year after the sale on paying the purchaser:

(1) the amount of his purchase with interest at a rate established by the judgment in the action that led to the execution sale, up to the time of redemption;

(2) the amount of any assessment or taxes which the purchaser may have paid thereon after purchase and interest on such amount;

(3) the amount of any repairs, maintenance expenses, or other expenditures that the purchaser may reasonably have made after purchase for the maintenance of the property, with interest on the amounts from the date of expenditure; and

(4) if the purchaser is also a creditor having a prior lien to that of the redemptioner other than the judgment under which such purchase was made, the amount of such lien with interest.

History: En. Sec. 231, p. 181, L. 1867; re-en. Sec. 281, p. 88, Cod. Stat. 1871; amd. Sec. 331, p. 129, L. 1877; re-en. Sec. 331, 1st Div. Rev. Stat. 1879; re-en. Sec. 342, 1st Div. Comp. Stat. 1887; amd. Sec. 1235, C. Civ. Proc. 1895; re-en. Sec. 6838, Rev. C. 1907; re-en. Sec. 9443, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 702; re-en. Sec. 9443, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1937; R.C.M. 1947, 93-5835; amd. Sec. 1, Ch. 503, L. 1991.

Cross-References
"Year" defined, 1-1-301.

25-13-803. Subsequent redemptions — when permitted, amount paid. (1) If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum on such last redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him with like interest on such amount, and the amount of any liens held by the said last redemptioner prior to his own, with interest; but the judgment under which the property was so sold need not be so paid as a lien. The property may be again, and as often as any redemptioner is so disposed, redeemed from any previous redemptioner, within 60 days after the last redemption, on paying the sum paid on the last previous redemption with interest thereon at the rate established by the judgment in the action that led to the execution sale, the amount of any assessment or taxes which the last previous redemptioner paid after the redemption by him with like interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with like interest.

(2) If the judgment debtor or the judgment debtor's spouse redeem, the judgment debtor or the spouse must make the same payments as are required to effect a redemption by a redemptioner.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part); amd. Sec. 2, Ch. 503, L. 1991.

25-13-804. Redemption by stockholder or corporation. (1) If a stockholder of a corporation redeems, the corporation, within 1 year after the date of sale, may redeem by paying to the redemptioner or the sheriff for his benefit the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the redemptioner, with like interest thereon.

(2) When a stockholder redeems, any other stockholder or stockholders may, at any time after such redemption and within 60 days after the expiration of 1 year from the date of sale, contribute to the redemption by paying to the redeeming stockholder or depositing with the sheriff for his benefit a sum which bears the same proportion to the amount necessary to redeem which the number of shares owned by such contributing stockholder or stockholders bears to the number of shares of such corporation outstanding, with interest on such sum from the date of redemption until the date of contribution at the rate established by the judgment in the action that led to the execution sale, together with a like proportion of the taxes or assessments paid by such redeeming stockholder, with like interest thereon; and if the corporation does not redeem the property within the time and in the manner and form as aforesaid, the said redeeming and contributing stockholders shall be entitled to receive a sheriff's deed for such property so redeemed and shall succeed to

the said property as tenants in common in such proportions, respectively, as they shall respectively pay or contribute to such redemption as aforesaid. The redeeming or contributing stockholder shall, in all cases when applying to redeem or contribute as aforesaid, present an affidavit setting forth the number of shares of stock owned by him and, to the best of his knowledge, the number of shares of stock of the corporation outstanding.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(3); amd. Sec. 3, Ch. 503, L. 1991.

25-13-805. Redemption by debtor from spouse. If the spouse of a judgment debtor redeem, the judgment debtor, within 1 year after the date of sale, may redeem by paying the spouse or the spouse's successors in interest or the sheriff for the benefit of the spouse or the successors in interest of the spouse the amount paid to effect the redemption, with interest thereon at the rate established by the judgment in the action that led to the execution sale from the date of redemption until the date of such payment, together with any taxes or assessments that may have been paid by the spouse or the successors in interest of the spouse, with like interest thereon.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(4); amd. Sec. 4, Ch. 503, L. 1991.

25-13-806. Notice of redemption, liens, and taxes and assessments paid. Written notice of redemption must be given to the sheriff and a duplicate filed with the county clerk, and if any taxes or assessments are paid by the redemptioner or if he has or acquired any liens other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the county clerk, and if such notice be not filed, the property may be redeemed without paying such tax, assessments, or lien.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

Liability of clerk relating to duties as recorder, 7-4-2623.

Fees of County Clerk, 7-4-2631.

25-13-807. Papers redemptioner must produce. A redemptioner must produce, to the officer or person from whom he seeks to redeem, and serve with his notice to the sheriff:

(1) a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court or by the clerk of the district court in the county where the judgment is docketed; or if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the county clerk; or if

upon an attachment, a copy of the affidavit of attachment, certified by the clerk of the district court;

(2) a copy of any assignment necessary to establish his claim, verified by the affidavit of himself or of a subscribing witness thereto;

(3) an affidavit by himself or his agent showing the amount then actually due upon the lien.

History: En. Sec. 234, p. 182, L. 1867; re-en. Sec. 284, p. 88, Cod. Stat. 1871; re-en. Sec. 334, p. 131, L. 1877; re-en. Sec. 334, 1st Div. Rev. Stat. 1879; re-en. Sec. 345, 1st Div. Comp. Stat. 1887; amd. Sec. 1238, C. Civ. Proc. 1895; re-en. Sec. 6841, Rev. C. 1907; re-en. Sec. 9446, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 705; re-en. Sec. 9446, R.C.M. 1935; R.C.M. 1947, 93-5838.

Cross-References

Search of records, 7-4-2621.

25-13-808. To whom redemption money paid. The payment mentioned in 25-13-802 through 25-13-806 may be made to the purchaser or redemptioner, as the case may be, or for him to the officer who made the sale or, in case his term of office has expired, to his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-809. Effect of redemption by debtor or debtor's spouse — certificate of redemption. (1) If the debtor redeem, the effect of the sale is terminated and the debtor is restored to his own estate. If the spouse redeem, such spouse shall become the owner of the debtor spouse's interest, subject to any liens thereon at the time of the execution sale.

(2) Upon a redemption by a debtor or the debtor's spouse, the person to whom the payment was made must execute and deliver to him or her a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the county clerk of the county in which the property is situated, and the county clerk must note the record thereof in the margin of the record of the certificate of sale.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References

Power of judicial officers to take acknowledgments, 3-1-404.

25-13-810. When purchaser entitled to conveyance. If no redemption be made within 1 year after the sale, the purchaser or his assignee is entitled to a conveyance; or if so redeemed, whenever 60 days have elapsed and no other redemption has been made and notice thereof given and the time for redemption has expired, the last redemptioner or his assignee is entitled to a sheriff's deed; but in all cases, the judgment debtor shall have the entire period of 1 year from the date of the sale to redeem the property.

History: En. Sec. 232, p. 182, L. 1867; re-en. Sec. 282, p. 88, Cod. Stat. 1871; amd. Sec. 332, p. 129, L. 1877; re-en. Sec. 332, 1st Div. Rev. Stat. 1879; re-en. Sec. 343, 1st Div. Comp. Stat. 1887; amd. Sec. 1236, C. Civ. Proc. 1895; re-en. Sec. 6839, Rev. C. 1907; en. Sec. 2, Ch. 107, L. 1913; re-en. Sec. 9444, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 703; amd. Sec. 2, Ch. 16, L. 1927; re-en. Sec. 9444, R.C.M. 1935; amd. Sec. 2, Ch. 103, L. 1937; amd. Sec. 56, Ch. 535, L. 1975; R.C.M. 1947, 93-5836(part).

Cross-References
"Year" defined, 1-1-301.

25-13-811. Who to execute conveyance. In all cases when, under the provisions of this chapter, a purchaser of property at execution sale shall be entitled to a conveyance of the same, such conveyance shall be executed to him by the officer who made the sale if he still be in office, but if the case the officer who made such sale is not in office at the time the purchaser may be entitled to such conveyance, then the conveyance shall be executed by his successor in office.

History: En. Sec. 233, p. 182, L. 1867; en. Sec. 283, p. 88, Cod. Stat. 1871; re-en. Sec. 333, p. 129, L. 1877; re-en. Sec. 333, 1st Div. Rev. Stat. 1879; re-en. Sec. 344, 1st Div. Comp. Stat. 1887; re-en. Sec. 1237, C. Civ. Proc. 1895; re-en. Sec. 6840, Rev. C. 1907; re-en. Sec. 9445, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 704; re-en. Sec. 9445, R.C.M. 1935; R.C.M. 1947, 93-5837(part).

25-13-812 through 25-13-820 reserved.

25-13-821. Possession of lands during redemption period. The purchaser of lands at execution sales is not entitled to the possession thereof as against the execution debtor during the period of redemption allowed by law while said execution debtor personally occupies the land as a home for himself and his family. The intention hereof being to insure to such debtor the possession of his land during the year of redemption.

History: En. Sec. 1, Ch. 230, L. 1921; re-en. Sec. 9449, R.C.M. 1921; amd. Sec. 1, Ch. 150, L. 1933; re-en. Sec. 9449, R.C.M. 1935; R.C.M. 1947, 93-5841(part).

25-13-822. Rents and profits during redemption period, accounting. (1) The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, are entitled to receive from the tenant in possession the rents of the property sold or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or his or their assigns from the property thus sold preceding such redemption, the amount of such rents and profits shall be a credit upon the redemption money to be paid. Any payments made under 25-13-802(2) and (3) must be subtracted from the credit for rents and profits.

(2) If the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor or his assigns a written and verified statement of the amount of such rents and profits thus received, the period for redemption is extended 5 days after such sworn statement is given by such purchaser or his assigns to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of 1 month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting and disclosure of such rents and profits, and until 15 days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

History: En. Sec. 236, p. 183, L. 1867; rep. Sec. 751, p. 187, Cod. Stat. 1871; en. Sec. 1240, C. Civ. Proc. 1895; re-en. Sec. 6843, Rev. C. 1907; re-en. Sec. 9448, R.C.M. 1921; Cal. C. Civ. Proc. 707; re-en. Sec. 9448, R.C.M. 1935; R.C.M. 1947, 93-5840; amd. Sec. 5, Ch. 503, L. 1991.

25-13-823. Restraint of waste during redemption period. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale or entitled to possession afterward, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used, to use it in the ordinary course of husbandry, to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor or for the repair of fences or for fuel for his family while he occupies the property.

History: En. Sec. 235, p. 182, L. 1867; re-en. Sec. 285, p. 89, Cod. Stat. 1871; re-en. Sec. 335, p. 131, L. 1877; re-en. Sec. 335, 1st Div. Rev. Stat. 1879; re-en. Sec. 346, 1st Div. Comp. Stat. 1887; re-en. Sec. 1239, C. Civ. Proc. 1895; re-en. Sec. 6842, Rev. C. 1907; re-en. Sec. 9447, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 706; re-en. Sec. 9447, R.C.M. 1935; R.C.M. 1947, 93-5839.

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-824. Enjoining injury to property after sale and before conveyance. The court or judge may, by injunction, upon good cause shown, restrain the party in possession from doing any act to the injury of real property after a sale on execution, before a conveyance.

History: En. Sec. 240, p. 93, Bannack Stat.; re-en. Sec. 261, p. 188, L. 1867; re-en. Sec. 310, p. 95, Cod. Stat. 1871; re-en. Sec. 360, p. 139, L. 1877; re-en. Sec. 360, 1st Div. Rev. Stat. 1879; re-en. Sec. 372, 1st Div. Comp. Stat. 1887; re-en. Sec. 1318, C. Civ. Proc. 1895; re-en. Sec. 6878, Rev. C. 1907; re-en. Sec. 9496, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 745; re-en. Sec. 9496, R.C.M. 1935; R.C.M. 1947, 93-6220(part).

Cross-References

When defendant may be arrested, 27-16-102.

Injunctions, Title 27, ch. 19.

General duty of care, 28-1-201.

Waste prohibited, 71-1-106.

Injunction to prevent injury to property, 71-1-227.

25-13-825. Damages for injury to property after sale and before conveyance. When real property has been sold on execution, the purchaser thereof or any person who may have succeeded to his interest may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyance.

History: En. Sec. 262, p. 188, L. 1867; re-en. Sec. 311, p. 95, L. 1871; re-en. Sec. 361, p. 139, L. 1877; re-en. Sec. 361, 1st Div. Rev. Stat. 1879; re-en. Sec. 373, 1st Div. Comp. Stat. 1887; re-en. Sec. 1319, C. Civ. Proc. 1895; re-en. Sec. 6879, Rev. C. 1907; re-en. Sec. 9497, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 746; re-en. Sec. 9497, R.C.M. 1935; R.C.M. 1947, 93-6221.

Cross-References

Injury to property defined, 27-1-106.

Damages generally, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

APPENDIX

EXHIBIT B

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

WALTER H. SAVOY, Plaintiff,	:	
vs.	:	NO. BDV-90-769
CASCADE COUNTY SHERIFF'S DEPARTMENT; and UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency, Defendants.	:	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On December 4, 1990, Plaintiff's Petition for Writ of Mandamus came on for hearing. Plaintiff was present and represented by Gary Deschenes, Defendant, United States of America, was present and represented by George Darragh, and Defendant, Cascade County Sheriff's Department, was present and represented by Nancy P. Cory. Oral testimony was heard and counsel presented various authorities to the Court for its consideration. Based upon the testimony, arguments of counsel, and all pleadings on file herein, and the Court being fully informed, the Court makes the following:

FINDINGS OF FACT

I.

On or about February 28, 1989, a judgment and decree of foreclosure were entered in the case of Interstate Production Credit Ass'n, Plaintiff vs. Hugh Sands, et al., Defendants, Cause

No. BDV-86-991, in the Montana Eighth Judicial District Court, Cascade County. Pursuant to this judgment and decree of foreclosure, an order of sale was issued commanding the Cascade County Sheriff to sell the real property described in the judgment and decree.

II.

On or about May 23, 1989, a Sheriff's sale was held and Plaintiff, Walter Savoy, purchased the property known as "Tract II", which property was located in Cascade County, Montana, and the property description of which was contained in the judgment and decree of foreclosure, as well as the order of sale.

III.

On May 17, 1990, the Farmers Home Administration submitted to the Cascade County Sheriff's Department notice of its intention to redeem the subject property known as Tract II. The notice of intention to redeem was in the form of a letter directed to Barry Michelotti, Sheriff, of the Cascade County Sheriff's Department. Along with that letter, the Farmers Home Administration presented a certified copy of the judgment decree to evidence its right to redeem. Also enclosed with the May 17, 1990 notice of intention to redeem was U.S. Treasury check #308423611912 in the amount of $90,030.14. This amount of money represented the purchase price paid by Plaintiff, with interest at six percent (6%) per annum for 360 days, as statutorily mandated.

IV.

On or about the same date, the Farmers Home Administration submitted to the Sheriff of Cascade County a notice of redemption.

V.

At or about the same time Tract II was being redeemed by the Farmers Home Administration, Tract I was also being redeemed by an assignee or successor in interest of the debtor.

VI.

On or about May 17, 1990, the Cascade County Sheriff's Department prepared and recorded a Sheriff's Certificate of Payment Price of Real Property under Decree of Foreclosure. This document recited that the Farmers Home Administration, an agency of the United States of America, had tendered and paid the amount of $90,030.14, which amount represented the purchase price, together with interest, by the purchaser, Plaintiff, Walter Savoy.

VII.

On or about May 17, 1990, the date the Farmers Home Administration provided the Cascade County Sheriff with notice of its intention to redeem the property, the same notice was given to Plaintiff by the Farmers Home Administration. That notice stated that the property being redeemed by the Farmers Home Administration was Tract II, the property Plaintiff had purchased for $85,000.00. The May 17, 1990 notice to Plaintiff reflects that the notice of redemption was also sent with that letter.

VIII.

The notice of redemption provided to the Cascade County Sheriff's Department by the Farmers Home Administration was not recorded at the Cascade County Clerk and Recorder's Department.

IX.

Not until June 8, 1990, did Plaintiff, through his counsel, notify the Cascade County Sheriff's Department that he was contending that the redemption notice of the Farmers Home Administration was defective. That letter, directed to the Cascade County Sheriff's Department by counsel for Plaintiff, indicated an intention to contest the redemptions of both Tract I and Tract II. The June 8, 1990 letter authored by Gary Deschenes did not set forth the nature of Plaintiff's objections to the notice of redemption, but alleged only that it was in violation of Section 25-13-807, M.C.A.

X.

Plaintiff filed a petition for Writ of Mandamus, claiming that he has no other plain, speedy and adequate remedy. There are rental homes on the property for which Mr. Savoy is not collecting rent, and there is a hay crop and pasture upon the property which is in dispute.

BASED upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

The United States of America, by and through its agent, Farmers Home Administration, was a party entitled to redeem the property on May 17, 1990, under and pursuant to Montana statutes, by virtue of a mortgage held by the Farmers Home Administration.

II.

The Cascade County Sheriff's Department is statutorily required to accept papers and documents relative to the redemption process, and to prepare and execute a Sheriff's Deed at the conclusion of the redemption period.

III.

In this case, the Cascade County Sheriff's Department received a certified copy of the judgment and decree of foreclosure. In that judgment and decree, the mortgage held by the Farmers Home Administration relative to Tract II was set forth with sufficient clarity and was identified appropriately by date and recording information.

IV.

The Cascade County Sheriff's Department did not receive an affidavit of an amount actually due upon the mortgage from the Farmers Home Administration on May 17, 1990. This information does not affect Farmers Home Administration's ability to redeem or propriety as a redeeming party, but is relevant only if a subsequent redemption were attempted.

V.

The notice provided by Walter Savoy, by and through his counsel of record, of his objection to the notice of redemption came after the redemption period expired. The notice of redemption was presented six days prior to the expiration of the redemption period.

VI.

The Cascade County Sheriff's Department performed all duties and responsibilities statutorily required of it in a reasonable, diligent and prudent manner.

VII.

When demand was made by Farmers Home Administration upon the Cascade County Sheriff's Department for issuance of a Sheriff's Deed, the Cascade County Sheriff's Department also had a demand from the Plaintiff to execute a Sheriff's Deed to him. The Cascade County Sheriff's Department has no discretion as to which party should be issued the deed.

VIII.

The equities of this matter are not such as to justify an award of attorney fees to the Plaintiff.

IX.

Plaintiff's damages, if any, were not incurred as a result of any act or omission on the part of the Cascade County Sheriff's Department. Attorney fees incurred by Plaintiff in prosecuting this litigation were not incurred as a result of any act or omission of the Cascade County Sheriff's Department.

BASED upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

1. That the Petition for Writ of Mandamus is hereby denied.

2. That Plaintiff be awarded no damages or attorney fees as against the Cascade County Sheriff's Department.

3. That the notice of redemption provided by Farmers Home Administration to the Cascade County Sheriff's Department was not fatally defective, but substantially complied with the redemption statutes, so as to allow the Cascade County Sheriff's Department to proceed with its obligations pursuant to Montana's redemption statutes.

4. The United States of America has substantially complied with the requirements of the statutes concerning the documents required in which to perfect their right of redemption. Plaintiff has made no showing of prejudice and he has received everything he is entitled to receive under the applicable statutes. Plaintiff by accepting the tender of the United States of America's check and having failed to state his objections to the attempted redemption has waived these objections.

5. Plaintiff's application for a Writ of Mandamus being equitable in nature, having failed to show any prejudice, the United States of America having substantially complied with the statutes, IT IS HEREBY ORDERED that the Plaintiff's Writ and application for mandamus is denied.

6. The record showing that no other party has attempted to redeem the property, 60 days having elapsed from the time the United States attempted to redeem the property on May 17, 1990, IT IS HEREBY ORDERED that the Sheriff of Cascade County shall issue a

deed to the Farmers Home Administration to the property described as Tract II.

DATED this 20th day of December, 1990.

DISTRICT JUDGE

cc: Gary Deschenes
George Darragh
Nancy P. Cory

APPENDIX

EXHIBIT C

FILED
DEC 16 1993
NANCY MORTON
Court Clerk
DEPUTY

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

WALTER H. SAVOY, Plaintiff, -vs- CASCADE COUNTY SHERIFF'S DEPARTMENT; and UNITED STATES OF AMERICA, by and through the Farmers Home Administration, its agency, Defendants.	)	No. BDV-90-769

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On November 29, 1993, a hearing was held by the Court on all parties' motions for summary judgment. The plaintiff was present and represented by Gary Deschenes. Defendant United States of America was represented by George Darragh and Defendant Cascade County Sheriff's Department was represented by Nancy P. Cory. The Court noted all parties had filed motions for summary judgment and oral testimony was heard and counsel presented various authorities to the Court for its consideration in determining the various motions for summary judgment. Based upon the briefs presented to the Court, arguments of counsel, all pleadings on file here

including all discovery recently filed with the Court and the Court being fully informed, the Court makes the following:

FINDINGS OF FACT

I.

On or about February 28, 1989, a judgment and decree of foreclosure were entered in the case of ***Interstate Production Credit Ass'n, Plaintiff vs. Hugh Sands, et al., Defendants***, Cause No. BDV-86-991, in the Montana Eighth Judicial District Court, Cascade County. Pursuant to this judgment and decree of foreclosure, an order of sale was issued commanding the Cascade County Sheriff to sell the real property described in the judgment and decree by tracts.

II.

On or about May 23, 1989, a Sheriff's sale was held and Plaintiff, Walter Savoy, purchased the property known as "Tract I" for $3001.00 and "Tract II" for $85,000.00, which property was located in Cascade County, Montana, and the property description of each tract was separately set forth in the judgment and decree of foreclosure, as well as the order of sale.

III.

On May 17, 1990, the Farmers Home Administration submitted to the Cascade County Sheriff's Department notice of its intention to redeem the subject property known as "Tract II". The notice of intention to redeem was in the form of a letter directed to Barry Michelotti, Sheriff, of the Cascade County Sheriff's Department. The Farmers Home Administration also presented with that letter a certified copy of the judgment decree above-described to evidence

its right to redeem. Also enclosed with the May 17, 1990 notice of intention to redeem was U.S. Treasury check #108423611912 in the amount of $90,030.14. This amount of money represented the purchase price paid by Plaintiff for Tract II with interest at six percent (6%) per annum for 360 days, as statutorily mandated.

IV.

On or about the same date, the Farmers Home Administration submitted to the Cascade County Sheriff's Department a notice of redemption.

V.

At or about the same time Tract II was being redeemed by the Farmers Home Administration, Tract I was also being redeemed from plaintiff by an assignee or successor in interest of the debtor. Plaintiff received a check in the appropriate amount from the redemptioner for "Tract I." No legal challenge has been initiated as to the redemption of "Tract I" and there were no subsequent redemptions.

VI.

On or about May 17, 1990, the Cascade County Sheriff's Department prepared and recorded a Sheriff's Certificate of Payment Price of Real Property under Decree of Foreclosure. This document recited that the Farmers Home Administration, an agency of the United States of America, had tendered and paid the amount of $90,030.14, which amount represented the purchase price of "Tract II," together with interest, by the purchaser, Plaintiff, Walter Savoy.

VII.

On or about May 17, 1990, the date the Farmers Home Administration provided the Cascade County Sheriff with notice of its intention to redeem the property, the same notice was given to Plaintiff by the Farmers Home Administration. That notice stated that the property being redeemed by the Farmers Home Administration was Tract II, the property Plaintiff had purchased for $85,000.00. The May 17, 1990 notice to Plaintiff reflects that the notice of redemption was also sent with that letter.

VIII.

The notice of redemption provided to the Cascade County Sheriff's Department by the Farmers Home Administration was not recorded at the Cascade County Clerk and Recorder's Department.

IX.

Sometime after May 17, 1990, but before June 8, 1990, plaintiff contacted Cascade County Sheriff's Office and had a meeting with Deputy Sheriffs John Strandell and Richard Duncan. During this meeting, plaintiff was informed of the redemption, but was told that the Cascade County Sheriff's Department could not provide legal advice.

X.

On June 8, 1990, the plaintiff, through his counsel, notified the Cascade County Sheriff's Department generally that he was contending that the redemption notice the Farmers Home Administration was defective. The June 8, 1990 letter authored by Gary Deschenes, counsel for plaintiff, indicated plaintiff's intention to protest both redemption of Tract I and Tract II but

did not set forth the nature of the plaintiff's objections to the notice of redemption. The letter only generally alleged that both of the redemptions were in violation of §25-13-807, M.C.A.

XI.

Plaintiff filed a petition for Writ of Mandamus, Complaint for Declaratory Judgment, and alleged violation of constitutional rights for taking of property without due process of law, naming the Cascade County Sheriff's Department and Farmers Home Administration as defendants.

XII.

On or about December 5, 1990, the Court heard plaintiff's petition for Writ of Mandamus. The plaintiff testified at the hearing as did Susan Hensleigh from Farmers Home Administration. Subsequent to that hearing, and or about December 20, 1990, the Court entered comprehensive Findings of Fact, Conclusions of law and Order denying plaintiff's petition for Writ of Mandamus.

XIII.

Subsequent to the December, 1990 order above-referred to, the parties proceeded with various discovery including depositions of three Sheriff's deputies, John Strandell, Richard Duncan, and James Burnes, and the Sheriff of Cascade County. Plaintiff also deposed employees of Farmers Home Administration who were involved with the redemption of "Tract II". Nothing in these depositions which have been reviewed by the Court revealed any conflict with the underlying facts as set forth in this Court's order concerning plaintiff's petition for Writ of Mandamus entered in December of 1990.

XIV.

The only contact by any members of the Cascade County Sheriff's office with plaintiff prior to the June 8th correspondence from Deschenes and other than at the judicial sale in May of 1989 occurred after the redemption was affected by Farmers Home Administration. The only contacts then between plaintiff and the Cascade County Sheriff's Department were in an effort to provide to plaintiff the U.S. Treasury check submitted by Farmers Home Administration. During none of the contacts between Cascade County Sheriff's Department and plaintiff were there any indications that the Sheriff's Department did anything other than attempt to appropriately provide to plaintiff the proceeds of the redemption from Farmers Home Administration.

XV.

Following the December, 1990 hearing the Court directed the Cascade County Sheriff's Department to issue the Sheriff's deed to Farmers Home Administration. The Sheriff of Cascade County issued the Sheriff's deed pursuant to this order.

XVI.

Counsel for plaintiff herein represented one of the parties in the underlying foreclosure action and in that capacity had received in June of 1989 an affidavit from an employee of Farmers Home Administration showing that the unpaid interest and principal owing to Farmers Home Administration under its mortgage in relation to "Tract II" was in excess of $400,000.00.

BASED upon the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

I.

The United States of America, by and through its agent, Farmers Home Administration, was a party entitled to redeem the property on May 17, 1990, under and pursuant to Montana statutes, by virtue of a mortgage held by the Farmers Home Administration.

II.

The Cascade County Sheriff's Department is statutorily required to accept papers and documents relative to the redemption process, and to prepare and execute a Sheriff's Deed at the conclusion of the redemption period. The Sheriff was obligated, pursuant to the Court's Order dated December 20, 1990, to issue the Sheriff's deed to Farmers Home Administration.

III.

Here, the Cascade County Sheriff's Department received a certified copy of the judgment and decree of foreclosure with the notice of intention of Farmers Home Administration to redeem. In that judgment decree, the mortgage held by the Farmers Home Administration relative to Tract II was set forth with sufficient clarity and was identified appropriately by date and recording information. The information provided in the judgment decree was sufficient to allow any person to appropriately search the records and obtain information relative to the mortgage. The documents submitted by Farmers Home Administration provided the sheriff with adequate evidence of its right to redeem.

IV.

Cascade County Sheriff's Department did not receive an affidavit of an amount due upon the mortgage from the Farmers Home Administration on May 17, 1990, and at no time thereafter. This affidavit does not affect Farmers Home Administration's ability to redeem or propriety as a redeeming party, but is relevant only if a subsequent redemption were attempted. Plaintiff had actual knowledge of Farmers Home Administration redemption. If a subsequent redemption were attempted, there was sufficient information in the judgment and decree that accompanied the notice of intention to redeem to allow any inquisitive party to obtain the information that would be in an affidavit of amount due.

V.

The notice of redemption was presented six days prior to the expiration of the redemption period. The notice provided by plaintiff, by and through his counsel of record, of his objection to the notice of redemption came after the redemption period expired. Further, the notice of objection was vague, ambiguous and set forth no specific grounds of objection. There is no evidence that prior to the redemption period expiring plaintiff made any effort to determine the amount actually due and owing to Farmers Home Administration upon its mortgage. It is plainly apparent that plaintiff's objections demonstrate a preconceived desire to refuse to accept tender. If plaintiff had pointed out his objections Farmers Home Administration would have had time to remedy technical deficiencies. If one fails to state his objections to a tender, he is deemed to have waived them.

VI.

Redemption statutes are remedial in nature and are to be liberally construed. In the absence of prejudice to the other parties, substantial compliance with the redemption statutes is sufficient to effect a redemption. Plaintiff received the full amount he was entitled to by the redemption. Plaintiff took no action to effect a subsequent redemption, if he was a party entitled to, and therefore has failed to show any prejudice.

VII.

Upon redemption, the redemptioner is subrogated to the rights of the purchaser at the Sheriff sale which rights included the right to demand and receive a sheriff's deed to the premises if no further redemption was had within 60 days. The redemption transfers to the redemptioner all the right, title, and interest acquired by the purchaser. Title vests upon receiving the sheriff's deed to the premises which includes title free from encumbrances.

VIII.

The Cascade County Sheriff's Department performed all of its statutory duties and responsibilities in a reasonable, diligent and prudent manner.

IX.

When demand was made by Farmers Home Administration upon the Cascade County Sheriff's Department for issuance of a Sheriff's Deed, the Cascade County Sheriff's Department also had a demand from the plaintiff to execute a Sheriff's Deed to him. The Cascade County Sheriff's Department did nothing until ordered by this Court

in December of 1990 to issue the deed to Farmers Home Administration. When receipt of that order was obtained, the Cascade County Sheriff's Department appropriately issued its Sheriff's Deed to Farmers Home Administration as ordered to do so by this Court.

X.

Prior to the December, 1990 order of this Court requiring the Cascade County Sheriff's Departments to issue the deed to Farmers Home Administration, Cascade County Sheriff's Department had no obligation to issue the deed to Plaintiff Walter Savoy.

XI.

The Cascade County Sheriff's Department appropriately waited for the outcome of the Petition for Writ of Mandamus in order to determine which party was entitled to the Sheriff's Deed.

XII.

Because Farmers Home Administration was a party entitled to redeem and provided sufficient basis for any person to obtain information concerning the amount due upon the mortgage held by Farmers Home, plaintiff has not suffered any damages by Farmers Home's failure to provide the affidavit showing the amount due and owing.

XIII.

Plaintiff was not damaged in any way as a result of any act or omission on the party of Cascade County Sheriff's Department or the Farmers Home Administration.

BASED upon the foregoing Findings of Fact and Conclusions of Law,the Court enters the following:

ORDER

1. There are no material and relevant facts at issue herein and summary judgment is appropriate.

2. Based upon the undisputed material facts as presented to the Court, the Cascade County Sheriff's Department Motion for Summary Judgment is well taken and should be granted in its entirety.

3. That the Motion for Summary Judgment filed by United States of America, by and through Farmers Home Administration, is well taken and should be granted in its entirety.

4. That plaintiff's Motion for Summary Judgment against Cascade County Sheriff's Department is hereby denied.

5. That plaintiff's Motion for Summary Judgment against the United States of America, by and through the Farmers Home Administration, is hereby denied.

IT IS HEREBY ORDERED that the Motion for Summary Judgment filed by Cascade County Sheriff's Department shall be granted and the Motion for Summary Judgment filed by United States of America, by and through the Farmers Home Administration, be granted in their entirety.

DATED this 16 day of December, 1993.

District Court Judge

cc: Gary Deschenes
George Darragh
Nancy P. Cory

APPENDIX

EXHIBIT D

IN THE SUPREME COURT

OF THE STATE OF MONTANA

WALTER H. SAVOY,

PLAINTIFF AND APPELLANT,

-VS-

CASCADE COUNTY SHERIFF'S DEPARTMENT AND UNITED STATES OF AMERICA, BY AND THROUGH THE FARMER'S HOME ADMINISTRATATION, its agency,

DEFENDANTS AND RESPONDENTS.

TRANSCRIPT ON APPEAL

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both parcels of land as Farmer's Home tried to redeem, but more importantly he didn't just bargain for that money plus the half percent interest per month that the statute allows, what he bargained for was the land. That's what he's prejudiced by, that's what he didn't get, and that's why we have been here today.

This case has taken so long. Mr. Savoy is very concerned about the land, that's what he wants, not the cash.

Farmer's Home Administration, after being told to follow the statutes, didn't, and if you don't follow the law, don't follow the steps, substantial compliance doesn't come into effect at all, because you have to start compliance.

My briefs go into the various cases, aside from Dupnik, basically I believe they all point out they all support Mr. Savoy's position. I don't know if you want me to go into those. I don't think there is a real argument. They speak clearly for themselves. Montana cases that will talk about strict compliance in Montana, those are what I would like to take a look at.

In particular, out of the nine briefs, Your Honor, I am sorry for the delay, there is a couple

C E R T I F I C A T E

STATE OF MONTANA)
: ss
County of Cascade)

I, CONNIE J. HEIMAN, do hereby certify that: I am a duly appointed, qualified and acting Official Court Reporter of the Eighth Judicial District of the State of Montana; that I reported all of the foregoing proceedings had in the above-entitled action, and the foregoing transcript contains a full, true and correct transcript of the said proceedings as transcribed.

IN WITNESS WHEREOF, I have hereunto set our hand on this _____day of _____ 1994.

_____

CONNIE J. HEIMAN
REGISTERED PROFESSIONAL REPORTER